Liability for pollen drift

The StarLink controversy has focused attention on pollen drift as a possible explanation for germ plasm from the unapproved GMO hybrid showing up in the taco shells and other products. It poses an important question: who is responsible for pollen drift?[7] Is the producer who creates the offensive condition liable? Or is the producer with the vulnerable crop responsible for creating a buffer zone? If that can be settled, how large a buffer zone is needed?

Thus far, no cases have been located that have been litigated to a court of record on responsibility for pollen drift. But there are some parallel situations that have been litigated.

In a 1977 case, the State of Washington Supreme Court was faced by a complaint involving the aerial spraying of crops.[8] Spray drift had fallen on an organic farm, causing economic loss. The owner of the organic farm sued. The organic farm was vulnerable to spray damage; the firm doing the spraying created an offensive condition.

The court stated that "in the present case, the Langans [the organic producers] were eliminated from the organic food market for 1973 through no fault of their own. If crop dusting continues on the adjoining property, the Langans may never be able to sell their crops to organic food buyers. [The helicopter spray firm and those who hired them], on the other hand, will all profit from the continued application of pesticides. Under these circumstances, there can be an equitable balancing of social interests only if [the spray service is] made to pay for the consequences of their acts."

The spray firm was held liable for the damages caused to the organic producer.

The court noted that Washington courts had adopted the "Restatement of Torts" which states—

> "One who carries on an abnormally dangerous activity is subject to liability …resulting from the activity, although he has exercised the utmost care to prevent such harm."[9]

Is pollen drift likely to be classified as an abnormally dangerous activity? That remains to be seen. If it is perceived as a matter of food safety, it is possible that pollen drift could be so classified.

Even if handled as a negligence, trespass or nuisance issue, the one creating an offensive condition knowing of the vulnerability of nearby crops could be liable.

The answer is likely to come from litigation over the next several years.

FOOTNOTES

1 See Harl, Ginder, Hurburgh and Moline, "The StarLink Situation," posted at www.iowagrain.org.

2 Aventis CropScience US ALP, Revised Label, April 3, 2000.

3 See "New StarLink, the Next Generation of Bt Corn: A Preplanting Guide with Information to Enhance Producer Usage, Insect Control and Insect Resistance Management, 2000 U.S. Edition.

4 See note 1 *supra*.

5 Statement by Stephen Johnson, EPA Deputy Administrator for Pesticides.

6 See note 1 *supra*.

7 See Redick and Bernstein, "Nuisance Law and the Prevention of Genetic Pollution: Declining a Dinner Date with Damocles," 30 *Env. L. Rep.* 10328 (2000).

8 Langan v. Valicopters, Inc., 567 P.2d 218 (Wash. 1977).

9 Restatement (Second) of Torts §§ 519, 520.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISABILITY OF DEBTOR. In June 1999, a local court appointed two persons to serve as co-conservators for the debtors, husband and wife, because the debtors were disabled by degenerative dementia. The conservatorship order granted the co-conservators broad powers to control the affairs of the debtors but did not specifically grant the co-conservators the authority to file a bankruptcy case for the debtors. In June 2000, the co-conservators filed a Chapter 11 petition on behalf of the debtors. A creditor objected to the petition, arguing that the co-conservators did not have the authority to file the petition. The court held that, under Tennessee law, co-conservators had only the powers enumerated in the order of conservatorship issued by the court; therefore, the co-conservators could not file a bankruptcy petition for the debtors without first obtaining permission from the local court. ***In re* Buda, 252 B.R. 125 (Bankr. E.D. Tenn. 2000)**.

FEDERAL TAX-*ALM* § 13.03[7].*

ADMINSTIRATIVE EXPENSES. The debtor's Chapter 7 estate incurred administrative expenses during the administration of the estate. The trustee filed an income tax return for the estate and claimed the administrative expenses as a deduction from gross income of the estate, resulting in no income tax owed by the estate. The IRS disallowed the deduction except as a miscellaneous deduction, limited to the amount in excess of 2 percent of gross income. The IRS argued that, because the debtor would not be allowed a deduction from gross income for bankruptcy administrative expenses, the bankruptcy estate should not be allowed such a deduction. The court held that I.R.C. § 1398(h)(1) specifically allows bankruptcy estates deductions not otherwise disallowed. The court then looked to I.R.C. § 67 which allows estates and trusts to deduct administrative expenses from income. The court held that I.R.C. § 67 applied to bankruptcy estates. A similar case, *In re Sturgill, 217 B.R. 291 (Bankr. D. Or. 1998)*, held that bankruptcy administrative expenses were not deductible as trade or business expenses. The court noted that I.R.C. § 67 was not raised or discussed in that case. ***In re* Miller, 252 B.R. 110 (Bankr. E.D. Tax. 2000)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The debtor entered into hedge-to-arrive (HTA) contracts with an elevator. The contracts called for later delivery of grain but allowed the debtor to roll over the delivery requirement to later crop years. The debtor was unable to produce sufficient crops to meet the contracts for several years and the HTA contracts were rolled over to the point where the debtor owed delivery of the grain plus money. A third HTA contract was entered into while the first two contracts were still outstanding. The third contract called for delivery within 60 days; however, the amount of grain far exceeded the debtor's growing capacity when the grain from the third contract was added to the two original contracts. The debtor sought to avoid the three contracts in the debtor's bankruptcy case as illegal off-exchange futures contracts. The court held that the existence of the rollover provision was insufficient to make the HTA contracts into futures contracts because delivery of the grain was always intended but was delayed by poor crop conditions. However, the court held that the third contract was avoidable as an illegal, off-exchange futures contract because both parties knew that delivery was impossible since the debtor was already obligated for the debtor's entire production capability. ***In re* Gray, 252 B.R. 689 (Bankr. S.D. Ohio 2000)**.

REPUDIATION. The plaintiff was a grain farmer which entered into a contract in January and October 1995 to sell 25,000 bu. Of No. 2 yellow corn to the defendant in March 1996. The plaintiff attempted to deliver the corn in March but the defendant refused delivery because of a lack of storage space and railroad cars. The defendant requested an additional 30 days to accept delivery. When rail cars did become available the plaintiff could not deliver the corn. Delivery was eventually made but with reservation of a claim on the contract by the plaintiff. The contracts contained a force majeure clause which made the buyer's performance contingent on, among other things, delay of carriers. The plaintiff argued that the request for 30 additional days for delivery because of the lack of rail cars was an invocation of the force majeure clause and acted as a repudiation of the contract delivery terms, excusing the plaintiff from performance. The court held that the request for the 30 additional days made no mention of any intent not to take delivery and was not a repudiation of the contract. **Blue Creek Farm v. Aurora Co-op. Elevator, 614 N.W.2d 310 (Neb. 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC has issued the criteria for applications for pilot projects for the harvest of biomass from conservation reserve program acres for use in energy production. Six projects are authorized, with no more than one project in any state or NASS crop reporting district. **65 Fed. Reg. 63052 (Oct. 20, 2000)**.

COTTON. The FSA has adopted as final regulations which define the term "without unnecessary delay" which could be used to determine whether a warehouse operators timely delivered cotton. The regulation provides: "Unless prevented from doing so by force majeure, a warehouseman identified in [7 C.F.R.] Sec. 735.200 shall deliver stored cotton without unnecessary delay. A warehouseman shall be considered to have delivered cotton without unnecessary delay if for the week in question, the warehouseman has delivered or staged for scheduled delivery at least 4.5% of either their licensed capacity or Commodity Credit Corporation approved storage capacity or other storage capacity as determined by the Secretary to be in effect during the week of shipment." **65 Fed. Reg. 63765 (Oct. 25, 2000)**.

FARM LOANS. The Agricultural Appropriations Act of 2000 contains an amendment to 31 U.S.C. § 3720B (see Harl, Threat to Commodity Loans and LDPs" page 73 *supra*) that excludes marketing assistance loans and loan deficiency payments from the provision denying eligibility for FSA financial assistance if the participant has a delinquent federal debt (other than a tax debt). **Sec. 845.**

POULTRY. The plaintiff was an importer of frozen poultry into Puerto Rico. The Puerto Rican Department of Agriculture regulations required that all poultry imported into Puerto Rico have a USDA inspection certificate which carries the date of the inspection and that frozen poultry must have been inspected within 30 days before importation into Puerto Rico. The Puerto Rican Department of Agriculture impounded frozen poultry imported by the plaintiff because the inspection certificates did not have a date of inspection on them. The court held that the USDA statutes and regulations governing poultry inspection preempted the Puerto Rican inspection requirements. **Northwestern Selecta, Inc. v. Munoz, 106 F. Supp.2d 223 (D. Puerto Rico 2000)**.

SHARED APPRECIATION AGREEMENTS. The Agricultural Appropriations Act of 2000 contains a provision allowing the USDA to amortize for up to 25 years the recapture amounts from terminated shared appreciation agreements. The interest rate "may not exceed the rate applicable to a loan to reacquire homestead property less 100 basis points." **Sec. 818**.

TOBACCO. The CCC has adopted as final regulations for the 2000 marketing quota for tobacco:

Kind and Type	Quota (Million pounds)
Virginia fire-cured(type 21)	2.138
Ky-Tenn. fire-cured(types 22-23)	42.9
Dark air-cured(types 35-36)	12.75
Virginia sun-cured(type 37)	0.171
Cigar filler & binder(types 42-44, 53-55)	3.64

The 2000 tobacco price support levels were as follows:

Kind and Type	Cents per pound
Virginia fire-cured(type 21)	155.9
Ky-Tenn. fire-cured(types 22-23)	171.6
Dark air-cured(types 35-36)	148.1
Virginia sun-cured(type 37)	138.0
Cigar filler & binder(types 42-44, 53-55)	123.8

65 Fed. Reg. 64589 (Oct. 30, 2000).

The FSA has issued final regulations (without provision for prior notice or public comment, as allowed by the ARPA 2000) under the Agricultural Risk Protection Act of 2000 which allow the buyer and seller of a portion of farm land with a tobacco quota to allocate the quota between the sold and remaining portion of the land as the parties agree. **65 Fed. Reg. 65718 (Nov. 2, 2000)**.

**Agricultural Law Manual* (ALM).

TUBERCULOSIS. The APHIS has adopted as final regulations to allow zones within a state to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. The regulations also increase the amount of testing that must be done before certain cattle and bison may be moved interstate. **65 Fed. Reg. 63501 (Oct. 23, 2000)**.

FEDERAL ESTATE AND GIFT TAX

GIFTS. The taxpayer owned timberland and stock in several banks. On August 1, 1991, the taxpayer executed a partnership agreement forming a partnership with the taxpayer's two sons, with each sone receiving a 25 percent interest in the partnership and the taxpayer receiving a 50 percent interest. The sons executed the agreement the next day. On August 1, 1991, the taxpayer also transferred the land to the partnership in two deeds for 50 percent of the land each. A month later some of the bank stock was transferred to the partnership. The taxpayer argued that the transfer of the land resulted in two gifts of minority interests (25 percent of each 50 percent interest) in the land to each son, entitling each gift to a minority interest discount. The taxpayer treated the gifts as enhancements of the sons' partnership interests, thus using the 25 percent partnership interests as the guide for valuing the gifts. The court held that the value of the gifts was to be determined by the nature of the property transferred, not the resulting type of ownership through the partnership. The court held that the transfers of land and stock were indirect gifts to the sons and were entitled to a 15 percent discount for an undivided fractional interest in the land transferred. **Shepherd v. Comm'r, 115 T.C. No. 30 (2000)**.

The decedent had owned and operated a funeral home with the surviving spouse. The business was incorporated and the decedent owned a portion of the stock. The decedent and spouse had four children, only two of whom were involved in the funeral home business. The decedent started a program of giving stock annually to the two children involved in the business and their spouses. The decedent was concerned that giving stock to the other children might allow the business to be held by non-family members. The annual transfers were designed to equal $10,000 in stock to each of the two children and their spouses. The spouses immediately transferred their shares to the decedent's children; thus, the gifted stock was held only by the two children involved in the business. The IRS argued that the transfers to the spouses were to be treated as indirect gifts to the decedent's children and were taxable to the extent they exceeded $10,000 per year. The court examined the circumstances of the transfers and held that the form of the gifts was to be disregarded and that the transfers were indirect gifts to the children. The court noted that the decedent wanted stock to be held only by their children who were involved in the funeral home business and that neither spouse was involved in the business. **Estate of Bies v. Comm'r, T.C. Memo. 2000-338**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent owned a farm as a sole proprietor and owned a farm products business as a solely-owned C corporation. The decedent's estate also consisted of business assets not actively used in any business. The estate elected to pay the federal estate tax in installments. The estate distributed the passive business assets under the will. The estate also transferred the sole proprietorship to an LLC, dissolved the C corporation and transferred the assets to another LLC and formed a third LLC to manage a quarry on the decedent's property. The IRS ruled that the distribution of the passive business assets was not a disposition under I.R.C. § 6166. The IRS also ruled that the formation of the LLCs was not a disposition but merely a change of business form and that distributions of LLC income to the members were not dispositions under I.R.C. § 6166. **Ltr. Rul. 200043036, July 27, 2000**.

RETURNS. The IRS has announced publication of new Form 706-D (October 2000), United States Additional Estate Tax Return Under Code Section 2057, and the accompanying instructions. Form 706-D is to be used by qualified heirs to report and pay the additional estate tax due under I.R.C. § 2057 when certain taxable events occur with respect to a qualified family-owned business interest (QFOBI) received by the qualified heir. Form 706-D is also used by a qualified heir to report certain nontaxable events, such as a disposition of the QFOBI by the qualified heir to a family member. A qualified heir must file Form 706-D to report any of the following events: (1) a taxable event under I.R.C. § 2057(f)(1); (2) an involuntary conversion or exchange of a QFOBI; (3) a transfer to a family member; (4) a qualified conservation contribution; or (5) the loss of US citizenship if the QFOBI passes to or is acquired or held in a qualified trust. As with special use valuation under I.R.C. § 2032A, the 10-year recapture period may be extended for a period of up to two years if the qualified heir does not begin to use the property for a period of up to two years after the decedent's death. The instructions provide that the amount of the additional estate tax is equal to the applicable percentage of the adjusted tax difference attributable to the QFOBI deduction. The applicable percentage, which ranges from 20% to 100%, is based on the number of years that the qualified heir materially participated (as defined under I.R.C. § 2032A) in the trade or business after the decedent's death. The instructions further direct that each qualified heir must file a separate Form 706-D, even if more than one qualified heir is involved in an event which requires a filing. The form must be filed, and any additional tax paid, within six months after the taxable disposition, disqualifying act or cessation of qualified use of the QFOBI, unless an extension of time has been granted. These documents are available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld;; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

FEDERAL INCOME TAXATION

C CORPORATIONS-*ALM* § 7.02[3].*

CONSTRUCTIVE DIVIDENDS. The taxpayers, husband and wife, owned a corporation which operated a flower bulb importing and growing operation. The business leased farmland and several buildings from the taxpayers, but not the taxpayers' residence on the property. The taxpayers claimed that the residence was leased to the corporation by an oral lease but

failed to provide any evidence to support the lease, such as payments made by the corporation. The corporation paid for several items: landscaping of the property, which was claimed as an advertising expense; all of the taxpayers' food costs, including groceries, which were claimed as a supplies deduction; construction of a solarium in the residence; and other general expenses for the residence. The landscaping expense was disallowed because the taxpayer failed to demonstrate how the landscaping benefited the corporation to any significant extent in relation to the primary benefit to the residence. The supplies deduction for the taxpayers' food costs was also denied because the taxpayers failed to demonstrate a business purpose for the expense. The corporation's payment of the food costs was also a constructive dividend to the taxpayers as a personal expense. The court noted that no other employee of the corporation received the same benefit. Although the taxpayers presented evidence that the solarium was used once to experiment with the growing of Echinacea, the cost of the solarium was a constructive dividend to the taxpayers as a personal expense because the taxpayers failed to demonstrate any other business use of the solarium. Since the residence was not leased by the corporation, the general residential expenses were not eligible for business deductions and were constructive dividends to the taxpayers. **Dobbe v. Comm'r, T.C. Memo. 2000-330**.

CASUALTY LOSS. In 1992 through 1995, the taxpayer claimed a casualty loss deduction for a "nonviable fetus" which was aborted by the taxpayer's former spouse in the mid-1970s. The court disallowed the deduction as untimely claimed and because a nonviable fetus was not property for purposes of I.R.C. § 165(c)(3). The appellate court affirmed in a decision designated as not for publication. **Riley v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,794 (7th Cir. 2000), *aff'g*, T.C. Memo. 1999-363**.

DISASTER PAYMENTS. On October 4, 2000, the president determined that certain areas in Florida were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding beginning on October 3, 2000. **FEMA-1345-DR**. On October 11, 2000, the President determined that certain areas in New York were eligible for assistance under the Act as a result of the West Nile virus on July 15, 2000. **FEMA-3155-EM**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

DUTY OF CONSISTENT REPORTING. The taxpayer had received a distribution from a pension plan and failed to timely roll over the distribution to another qualified plan. However, the taxpayer did not report the distribution as income since the distribution was eventually placed in a qualified plan. The IRS did not challenge the taxpayer's return for the year of the distribution. After the statute of limitations on that return had expired, the taxpayer withdrew the amount from the plan. The taxpayer also did not report that distribution as income because the taxpayer felt that the distribution was taxable in the earlier distribution tax year and not in the final distribution year. The IRS issued a deficiency for the final distribution tax year based on the duty of consistent reporting. The taxpayer argued that the duty of consistent reporting had no foundation in law and that the Tax Court had no authority to apply an equitable doctrine. The appellate court held that the duty of consistent reporting was well established as an equitable doctrine to prevent taxpayers from benefiting from inconsistent tax reporting and that the Tax Court had sufficient equitable powers to apply the duty in this case. **Estate of Ashman v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,806 (9th Cir. 2000)**.

PENSION PLANS. For plans beginning in October 2000, the weighted average is 5.95 percent with the permissible range of 5.35 to 6.24 percent (90 to 106 percent permissible range) and 5.35 to 6.54 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2000-55, I.R.B. 2000-__**.

RETURNS. In an IRS web posting on Oct. 30, 2000, the IRS warned that electronic return originators may be sanctioned if they violate the rules requiring the practitioner to be in receipt of Forms W-2, Wage and Tax Statement, Form W-2G, Certain Gambling Winnings, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and instead use pay stubs as documentation for returns. See http://www.irs.ustreas.gov.

The IRS has announced the publication of revisions of Publication 225, Farmer's Tax Guide, and Publication 1524, Procedures and Specifications for the 1065 E-File Program-U.S. Partnership Return Income For Tax Year 2000, Form 4835 (2000), Farm Rental Income and Expenses; Form 6252 (2000), Form 943-PR (2000), Planilla Para La Declaracion Anual De La Contribucion Del Patrono De Empleados Agricolas; Form 1040, Schedule EIC (2000), Earned Income Credit, Qualifying Child Information; Form 8829 (2000), Expenses for Business Use of Your Home, and instructions; and Form 8863 (2000), Education Credits (Hope and Lifetime Learning Credits). These documents are available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) through FedWorld;; (3) via the internet at http://www.irs.gov/prod/cover.html; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

SOCIAL SECURITY TAX-*ALM* § 4.06.* Beginning with the January 2, 2001 payment, the monthly social security benefit payments is a maximum of $530 for an individual and $796 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2001 is $80,400, with **all** wages and self-employment income subject to the medicare portion of the tax. The retirement earnings test exempt amount (the point at which retirees begin to lose benefits in conjunction with their receipt of additional earnings) was eliminated for individuals age 65 through 69 as of January 2000. However, it remains in effect for individuals age 62 through 64 and a modified test applies for the year in which an individual reaches age 65. The retirement earnings test exempt amount will rise from $17,000 a year to $25,000 a year for the year in which an individual attains age 65; the test applies only to earnings for months prior to reaching age 65. One dollar in benefits will be withheld for every $3 in earnings above the limit and no limit on earnings will be imposed beginning in the month of the individual's 65th birthday. For retirees under age 65, the retirement earnings test exempt amount is $10,680 a year, with $1 withheld for every $2 in earnings above the limit. The amount of wages necessary for one quarter of coverage is $830.

TRAVEL EXPENSES. The taxpayer was a corporation which provided oil pipeline maintenance services for the North Slope oil fields in Alaska. Because the employees worked for

******Agricultural Law Manual* (ALM).

only three week shifts and the North Slope was inhospitable, most employees lived in the lower 48 states. The taxpayer reimbursed the employees for travel expenses from the employees' home to the North Slope. The taxpayer did not withhold any social security taxes or income taxes from the travel payments. The court noted that the definition of wages is the same for FICA and income tax liability; however, Treas. Reg. §§ 31.3401(a)-1(b), 31.3121(a)-1(h) exclude reimbursed travel expenses incurred in the business of the taxpayer. Thus, the taxpayer was not liable for FICA or income tax withholding for the reimbursed travel expenses. **HB & R, Inc. v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,795 (8th Cir. 2000)**.

TRUSTS. The debtor performed veterinary services, raised cattle and received royalty income from oil and gas wells on the debtor's property. Income from these sources was paid to trusts established and controlled by the taxpayer. The court held that the taxpayer was liable for the income tax on the earnings from the veterinary practice, cattle sales and royalty payments. **Temple v. Comm'r, T.C. Memo. 2000-337**.

The debtor owned a corporation as a sole shareholder and provided computer consulting services for the corporation. The taxpayer transferred the corporation to a trust and the trust was transferred to other off-shore trusts. The taxpayer continued to operate the business as before the transfers and the trustees had no participation in the operation of the business or trusts. The court held that the income from the corporation was included in the taxpayer's income because the trusts lacked economic substance. **Lund v. Comm'r, T.C. Memo. 2000-334**.

PRODUCT LIABILITY

PESTICIDES. The plaintiff was injured while transporting chlorine tablets in plastic buckets. The plaintiff claimed that the buckets were defective in preventing the chlorine fumes from escaping into the vehicle during transport. The defendant manufacturer argued that the suit was preempted by FIFRA in that the design of the container was part of the labeling process or was covered by the child-resistant regulations of the EPA. The court held that the claim of defective packaging was not preempted by FIFRA and that the child-resistance container regulations of the EPA were not included in the preemption language of FIFRA, which involved only the regulations promulgated under FIFRA. **Lucas v. Bio-Lab, Inc., 108 F. Supp.2d 518 (E.D. Va. 2000)**.

WORKERS' COMPENSATION

SEASONAL EMPLOYEES. The plaintiff was hired by the defendant on a seasonal basis to operate a corn harvester for the defendant. The plaintiff was also self-employed as a contract seed corn grower for the defendant. The plaintiff was injured in an accident with a corn harvester while performing the seasonal employment for the defendant. The plaintiff was entitled to weekly workers' compensation benefits and the issue was the calculation of those benefits. Under Iowa law, the benefits were to be determined by multiplying by one fiftieth the employee's total earnings from "all occupations" during the previous 12 months. The issue was whether the plaintiff's total earnings included self-employment income or only the earnings from seasonal employment. The court held that the term "all occupations" included self-employment; therefore, the plaintiff's earnings for the previous 12 months included income from the plaintiff's farming operations and the seasonal employment. **Brown v. Star Seeds, Inc., 614 N.W.2d 577 (Iowa 2000)**.

ZONING

HOG CONFINEMENT FACILITY. The defendant purchased a farm in 1997 for the purpose of constructing and operating a 6-7,000 hog confinement facility on the property. In 1998, the plaintiff township passed an ordinance which required a special permit for any concentrated livestock operation which involved more than 200 animals. The defendant refused to apply for the permit before starting construction and the township obtained an injunction against further construction of the facility. The defendant argued that the ordinance violated the Michigan right-to-farm act and that the facility was a prior nonconforming use of the property. The trial court held that the defendant's preconstruction activities on the farm were sufficient to establish the farm as a prior nonconforming use and did not reach the right-to-farm issue. The court found that the defendant had accomplished the following activities before enactment of the ordinance: (1) purchasing the land, (2) acquiring financing, (3) hiring a designer for the farm and manure pits, (4) obtaining quotes for materials and entering into contracts for supplies, (5) purchasing insurance, (6) grading the site, (7) staking the location of the site, (8) applying for well and sediment control permits, (9) constructing the manure pits and sewage system, and (10) building an access road and installing a culvert. The court held that these activities were insufficient to establish a prior nonconforming use because the cost and effort involved were miniscule in comparison to the full construction and operation of the facility. The court also ruled on the right-to-farm issue. After the trial court decision in this case, Michigan enacted an amendment to the right-to-farm statute, Mich. Stat. § 12.122(4)(6), which preempted any local ordinances which conflict with any portion of the right-to-farm law. The court remanded the case for reconsideration of the case in light of the amendment. **Belvidere Township v. Heinze, 615 N.W.2d 250 (Mich. App. 2000)**.

CITATION UPDATES

Connor v. Comm'r, 218 F.3d 733 (7th Cir. 2000) (passive activity losses) see p. 110 *supra*.

Kurzet v. Comm'r, 222 F.3d 830 (10th Cir. 2000) (depreciation) see p. 132 *supra*.

Labelgraphics, Inc. v. Comm'r, 221 F.3d 1091 (9th Cir. 2000) (reasonable compensation) see p. 132 *supra*.

Srivastava v. Comm'r, 220 F.3d 353 (5th Cir. 2000) (court awards and settlements) see p. 117 *supra*.

United Dairy Farmers, Inc. v. United States, 107 F. Supp.2d 937 (S.D. Ohio 2000) (environmental cleanup costs) see p. 101 *supra*.

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